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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/089,705 | 06/03/2002 | Karlheinz Beyrich | RWS-32/425 | 2723 |
| 24131 | 7590 | 01/26/2005 | EXAMINER | |
| LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480 | | | ART UNIT | PAPER NUMBER |

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|--|----------------------------------|--------------------------------|
| Notification of Non-Compliance With 37 CFR 1.192(c) | Application No. 10/089,705 | Applicant(s) BEYRICH ET AL. |
| | Examiner Christopher R Harmon | Art Unit 3721 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 10 December 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three TIME PERIODS: (1) ONE MONTH or THIRTY DAYS from the mailing date of this Notification, whichever is longer; (2) TWO MONTHS from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.

1. The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. A single ground of rejection has been applied to two or more claims in this application, and
 - (a) the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. Other (including any explanation in support of the above items):

See Continuation Sheet



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700

Continuation of 9. Other (including any explanation in support of the above items): The summary of the claimed subject matter does not comply with the new rules. The limitations of the claimed invention should be referred to in a concise manner; see below.

Final Rules: Practice Before the BPAI

Appeal Brief - § 41.37

Appeal Brief - copy requirement and time for filing (§ 41.37)

One copy of the brief is required rather than three copies consistent with the implementation of IFW.

The brief is required to be filed within two months from the date of filing of the notice of appeal.

The time allowed for reply to the action from which the appeal was taken is no longer relevant.

The time period for filing the brief is extendable under:

§§ 1.136(a) & (b) for patent applications (e.g., may extend up to five months after the two month time period); and

§ 1.550(c) for ex parte reexamination proceedings. See §41.37(e).

Final Rules: Practice Before the BPAI

Appeal Brief - § 41.37

Appeal Brief - effective date impact

An appeal Brief filed on or after September 13, 2004 must be in compliance with the requirements of § 41.37(c).

An appeal Brief filed prior to September 13, 2004 must either be in compliance with the requirements set forth in former § 1.192 or new §41.37(c).

If an appeal brief filed prior to the effective date fails to comply with former § 1.192 and the Office mails a notice requiring correction(s), an amended brief that complies with either former § 1.192 or § 41.37(c) would be acceptable.

If appellant reinstates the appeal on or after the effective date, the second appeal brief must be in compliance with the requirements of §41.37(c).

Final Rules: Practice Before the BPAI

Appeal Brief - § 41.37

Content and format of the appeal brief (§ 41.37)

The brief must contain the following items (§ 41.37(c)):

Real party in interest (similar to former § 1.192).

A statement identifying by name the real party in interest even if the party named in the caption of the brief is the real party in interest.

Related appeals and interferences (similar to former § 1.192).

Identification of all other prior and pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision.

Status of claims (similar to former § 1.192).

The status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of the appealed claims.

Status of amendments (same as former § 1.192).

A statement of the status of any amendment filed subsequent to final rejection.

Summary of claimed subject matter (replacing "summary of invention").

A concise explanation of the subject matter defined in each of the independent claims involved in the appeal,

Must refer to the specification by page and line number, and to the drawing, if any, by reference characters.

For each independent claim involved in the appeal and for each dependent claim argued separately,

Every means plus function and step plus function must be identified, and

The structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Grounds of rejection to be reviewed on appeal (replacing "issues for review" and "grouping of claims").

Example: Claims 1 to 10 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. X.

Argument (has been revised).

A separate heading is required for each ground of rejection.

Any claim(s) argued separately should be placed under a subheading.

A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

When multiple claims subject to the same ground of rejection are argued as a group, the Board may select a single claim from the group to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.

Claims appendix (similar to former § 1.192).

A copy of the claims involved in the appeal.

Evidence appendix (new)

Copies of any evidence entered and relied upon in the appeal.

Related proceedings appendix (new)

Copies of decisions rendered by a court or the Board in any proceeding identified in the related appeals and interferences section.

Final Rules: Practice Before the BPAI

Appeal Brief - § 41.37

Non-compliant appeal briefs (§ 41.37(d))

If a brief does not comply with the requirements set forth in § 41.37, the appellant will be notified of the reasons for noncompliance.

Appellant will be given 1 month or 30 days from the mailing of the notification of non-compliance, whichever is longer, to file an amended brief. See §41.37(d).

The time period for filing the amended brief is extendable under:

§§ 1.136(a) and (b) for patent applications (e.g., may extend up to five months after the two month time period); and

§ 1.550(c) for ex parte reexamination proceedings. See §41.37(e).